

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 18-0490 RE
)	
)	
RYAN MIELCAREK)	
STIVAN MANAGEMENT, LLC)	
)	
Respondents.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about July 30, 2018, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Stivan Management, LLC and Ryan Mielcarek*, No. 18-0490 RE. In that Default Decision, the Administrative Hearing Commission found that Respondent Ryan Mielcarek's real estate inactive broker license and broker associate licenses (license nos. 2008004736, 2012021576 and 2012021577) and Stivan Management, LLC's real estate association license (license no. 2012006719) are subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.100.2, (15), (16), and (19), RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the properly pled complaint and the Default Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on February 6, 2019, at the Division of Professional Registration, 3605 Missouri Boulevard,

¹ All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondents' licenses. All of the members of the Commission were present throughout the meeting. Further, each member of this Commission has read the Default Decisions of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Richard Groeneman. Respondent Mielcarek having received proper notice and opportunity to appear did appear in person without legal counsel. Respondent Stivan Management, LLC having received proper notice and opportunity to appear did not appear through legal counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the properly pled Complaint and the Default Decision of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Stivan Management, LLC and Ryan Mielcarek*, Case No. 18-0490 RE, issued July 30, 2018, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent Mielcarek

appeared in person without legal counsel and Respondent Stivan Management, LLC failed to appear through legal counsel at the hearing before the Commission.

4. This Commission licensed Respondent Mielcarek as an inactive broker, license number 2008004736, and as a broker associate, license numbers 2012021576 and 2012021577. Respondent Mielcarek's inactive broker license and broker associate licenses were not current at all times relevant to this proceeding. On June 30, 2018, Respondent's inactive broker license expired and on June 30, 2016 Respondent's broker associate licenses expired. This Commission licensed Respondent Stivan Management, LLC as a real estate association, license number 2012006719. Respondent Stivan Management, LLC's real estate association license was not current at all times relevant to this proceeding. On April 26, 2016, Respondent's real estate association license was Closed/Out of Business and on June 30, 2016 Respondent's real estate association license expired.

II.

CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the properly pled complaint and Default Decision issued by the Administrative Hearing Commission dated July 30, 2018, in *Missouri Real Estate Commission v. Stivan Management, LLC and Ryan Mielcarek*, Case No. 18-0490 RE, takes official notice thereof, and hereby enters its conclusions of law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Default Decision dated July 30, 2018, Respondents' real estate inactive broker and broker associates licenses, number 2008004736, 2012021576 and 2012021577 and real

estate association license number 2012006719 are subject to disciplinary action by the Commission pursuant to § 339.100.2 (15), (16), and (19), RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Default Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that:

Respondent Stivan Management LLC's real estate association license (license no. 2012006719) is hereby **REVOKED**. All evidence of Respondent Stivan Management LLC's licensure shall be immediately returned to the Commission within 30 days of this Order along with a Closing of a Real Estate Brokerage/Sole Proprietorship form, if Respondent has not already done so.

Respondent Ryan Mielcarek's inactive broker license and broker associate licenses (license nos. 2008004736, 2012021576 and 2012021577) are hereby placed on **FIVE (5) YEARS PROBATION**. During Respondent's probation, Respondent shall be entitled to practice under his respective licenses provided that Respondent adheres to all of the terms stated herein. The period of probation shall constitute the "disciplinary period."

The terms and conditions of the disciplinary period are as follows:

A. During the period of probation, Respondent shall be prohibited from managing property for any third party through any entity.

B. Respondent shall keep the MREC apprised at all times, in writing, of Respondent's' current addresses and telephone numbers at each place of residence and business. Respondent shall notify the MREC within ten (10) days of any change in this information.

C. Respondent shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all requirements necessary to maintain his licenses.

D. Respondent shall be prohibited from obtaining any additional real estate license(s) from the Commission without the prior written approval of the Commission. Respondent shall request permission to obtain additional license(s) in writing.

E. Respondent shall meet in person with the Commission or its representative any such time or place as required by the Commission or its designee upon notification from the Commission or its designee. Said meetings will be at the Commission's discretion and may occur periodically during the probation period.

F. Respondent shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested by the Commission or its designee.

G. During the probationary period, Respondent shall accept and comply with unannounced visits from the Commission's representative to monitor compliance with the terms and conditions of this Order.

H. Respondent shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations duly promulgated under all local, state and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Respondent's licenses as an inactive broker and

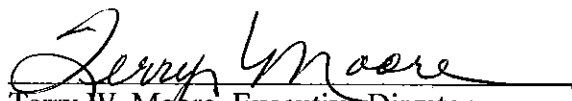
broker associate(s) under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall constitute a violation of this Order.

I. Upon the expiration and successful completion of the disciplinary period, Respondent's respective real estate inactive broker license and broker associate licenses shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondent has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent's real estate inactive broker license and real estate broker associate licenses.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 15th DAY OF FEBRUARY, 2019.

MISSOURI REAL ESTATE COMMISSION


Terry W. Moore, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION)
)
Petitioner,)
)
v.)
)
STIVAN MANAGEMENT, LLC and Ryan)
Mielcarek,)
)
Respondents.)

No. 18-0490


DEFAULT DECISION

On June 21, 2018, Petitioner filed a properly pled complaint seeking to discipline Respondents. Respondents were served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on Jun 23, 218.

More than thirty days have elapsed since Respondents were served. Respondents have not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo 2016, we enter a default decision against Respondents establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on July 30, 2018.


BRETT W. BERRI
Commissioner

FILED

June 21, 2018

ADMINISTRATIVE HEARING
COMMISSION

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

MISSOURI REAL ESTATE COMMISSION)

3605 Missouri Blvd.)

P.O. Box 1339)

Jefferson City, Missouri 65102-1339,)

Petitioner,)

v.)

No. _____

STIVAN MANAGEMENT, LLC,)

Serve on: RYAN MIELCAREK,)

8816 MANCHESTER ROAD, #267)

SAINT LOUIS, MO 63144)

and)

RYAN MIELCAREK)

8816 MANCHESTER ROAD, #267)

SAINT LOUIS, MO 63144,)

Respondents.)

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC" or
"Commission"), by and through the undersigned counsel, and for its cause of
action against Respondents Stivan Management, LLC, and Ryan Mielcarek
states:

Allegations Common to All Counts

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo,¹ for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo (as amended), relating to real estate salespersons and brokers.

2. Ryan Mielcarek ("Mielcarek") holds a real estate association and real estate broker associate licenses, Nos. 2012021576 and 2012021577, and an inactive broker license, No. 2008004739. At all times relevant herein, Mielcarek's licenses were current and active. Currently, license Nos. 2012021576 and 2012021577 are cancelled; but license No. 2008004739 is active.

3. Stivan Management, LLC, is a Missouri limited liability company, charter no. LC1036161.

4. At all relevant times herein, Stivan Management, LLC, was licensed with the MREC as a real estate association, license No. 2012006719. License No. 2012006719 expired on or about 04/26/2016.

¹All statutory citations are to the Revised Statutes of Missouri 2000, as amended, unless otherwise noted.

5. Stivan Management, LLC, does business under the fictitious names, Stivan Group and/or Stivan Management, hereinafter referred to as ("Stivan") which are registered with the MREC.

6. At all times relevant herein, Mielcarek was the designated broker of Stivan; and, as such, Mielcarek bears responsibility for his own conduct as well as that of Stivan.

7. Mielcarek's real estate licenses are culpable for the conduct and violations revealed by the MREC's audit of Stivan.

8. References herein to Mielcarek are also references to Stivan.

9. References herein to Stivan are also references to Mielcarek.

10. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.100.2, RSMo.

11. Section 339.100.2, RSMo , provides:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the

funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

.....

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

.....

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

.....

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

.....

12. Section 339.040.1, RSMo, provides:

1. License shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage,

broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

13. Section 339.105, RSMo, provides:

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

14. Section 339.710(12), RSMo, defines the term "designated broker"

and provides:

(12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker;

15. State Regulation 20 CSR 2250-8.020(1) provides:

(1) Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership.

16. State Regulation 20 CSR 2250-8.096(1) provides:

(1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

17. State Regulation 20 CSR 2250-8.120(7) provides:

(7) The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

18. State Regulation 20 CSR 2250-8.160(1) provides:

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing

statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

19. On or about August 22, 2016 an MREC auditor conducted an audit and examination of Stivan's business records and escrow accounts ("Audit") for the period of August 2015 to August 2016 ("Audit Period").

20. During the Audit Period, Stivan Management, LLC maintained the following escrow accounts, held by PNC Bank, which were registered with MREC:

Property Management Account # XXXXXX4794

Property Management Account # XXXXXX2869

Count I

BROKER FAILED TO ALLOW COMMISSION OR DULY AUTHORIZED AGENT ACCESS TO BROKERS REAL ESTATE RECORDS

21. MREC realleges and incorporates by reference paragraphs 1 through 18 as though fully set forth herein.

22. During the audit, Mielcarek failed to provide Stivans property management account records for PNC Bank accounts numbered XXXXXX4794 and XXXXXX2869 to the MREC's examiner because he did not have access to the account records, in violation of Section 339.105.3, RSMo, and 20 CSR 2250-8.160(1).

23. Based on the conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to §339.100.2(15), RSMo, for violations of §339.105.3, RSMo. and 20 CSR 2250-8.160(1).

Count II

**BROKER FAILED TO SUPERVISE THE REAL ESTATE ACTIVITIES OF
ALL LICENSED AND UNLICENSED PERSONS**

24. MREC realleges and incorporates by reference paragraphs 1 through 18 as though fully set forth herein.

25. During the audit, Mielcarek failed to provide Stivan's property management account records for PNC Bank accounts number XXXXXX4794 and XXXXXX2869 to the MREC's examiner because he did not have access to the account records.

26. Mielcarek admitted to the MREC examiner during the audit that he did not have access to the brokerage's escrow account records because those records were being retained by others within the Stivan organization.

27. As the designated broker for Stivan Management, LLC, Mielcarek is responsible for the maintenance of the brokerage's escrow accounts pursuant to 20 CSR 2250-88.120(7). By failing to retain control over the escrow account records, and by failing to ensure he could access those account records in order to maintain the account, Mielcarek failed to

supervise the real estate activities of all persons within the Stivan organization, pursuant to 20 CSR 2250-8.020.1.

28. Based on the conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to §339.100.2(15), RSMo, for violations of 20 CSR 2250-8.020(1).

Count III
LICENSEE'S BROKERAGE RELATIONSHIP WAS NOT DISCLOSED IN
WRITING

29. MREC realleges and incorporates by reference paragraphs 1 through 18 as though fully set forth herein.

30. During the audit, the MREC examiner determined that a Residential Lease Agreement for 8109 Titus Road, St. Louis, MO 63114, dated 02/26/2016 failed to disclose in writing, the brokerage relationship by each party to the real estate transaction on or before such party's first signature to the real estate contract. The brokerage relationship was not included or incorporated into the real estate contract, nor was there an addendum or incorporated document containing the written confirmation of the brokerage relationship. Failure to disclose, in writing, the brokerage relationship by each party to the real estate contract is a violation of 20 CSR 2250-8.096(1).

31. Based on the conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to §339.100.2(15), RSMo, for violations of 20 CSR 2250-8.096(1).

32. The conduct of Stivan and Mielcarek, individually and collectively, as alleged in each count of this Complaint, individually and collectively, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross incompetence, providing cause to discipline the real estate licenses of Stivan and Mielcarek pursuant to § 339.100.2(16) and (19), RSMo.

33. The conduct of Stivan and Mielcarek, individual and collectively, as alleged in each count of this Complaint, individually and collectively demonstrates that Stivan and Mielcarek are not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public, which are grounds for the MREC to refuse to issue a license under § 339.040.1, RSMo, providing cause to discipline the real estate licenses of Stivan and Mielcarek pursuant to § 339.100.2(16), RSMo.

WHEREFORE, Petitioner respectfully requests this Commission to conduct a hearing in this cause pursuant to Chapter 621, RSMo, and thereafter to issue its findings of fact and conclusions of law determining that cause exists for discipline against the real estate licenses of Stivan and

Mielcarek for violations of Chapter 339, RSMo, and the regulations promulgated thereunder, and for such other and further relief this Commission deems just and proper.

Respectfully submitted,

JOSHUA D. HAWLEY
Attorney General

/s/ Richard N. Groeneman

Richard N. Groeneman
Missouri Bar No. 57157
Assistant Attorney General
P.O. Box 861
St. Louis, MO 63188
Telephone: 314-340-7834
Telefax: 314-340-7891
E-mail: richard.groeneman@ago.mo.gov

Attorneys for Petitioner